

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ALLSTATE INSURANCE as Subrogee of
GERALD FEAGINS,

Plaintiff,

vs.

KENAE MERRITT; U.S. POSTAL
SERVICE,

Defendants.

8:17CV00173

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 2679(d)(2), Defendants Kenae Merritt and U.S. Postal Service remove to this Court the State Court civil action indicated in the attachments to this Notice.

Defendants represent that:

1. Defendants Kenae Merritt and the U.S. Postal Service are Defendants in the above-captioned civil action, which is pending in the County Court of Douglas County, Nebraska, as Case No. CI 17-7055. No trial has yet been had in that action. Copies of all process, pleadings, and orders served upon Defendant in that action are attached to this notice as Exhibit A.

2. At all times relevant herein, Defendants Kenae Merritt was an employee at the U.S. Postal Service and acting within the scope of her employment.

3. Plaintiff in the state court action seeks insurance costs for damages to Subrogee Gerald Feagins' vehicle which was allegedly involved in a motor vehicle collision in Omaha, Nebraska with Defendant Kenae Merrit, who was acting within the scope of her employment with the U.S. Postal Service.

4. Plaintiff's claim for relief alleges negligence by Defendants in a collision with the Feagins' vehicle. However, Congress has provided that the exclusive remedy for such an alleged

“wrongful” act of an employee of the United States Government, acting within the scope of her employment, shall be an action against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671-2680 (1988). See the Federal Employees’ Liability Reform and Tort Compensation Act of 1988, § 5, Publ. No. 100-694, 102 Stat. 4563 (1988) (codified at 28 U.S.C. § 2679(b)(1)). Attached hereto as Exhibit B is the certification of the United States Attorney that Defendants Kenae Merritt was acting within the scope of her employment at time of the incident out of which the claim arose. Title 28 U.S.C. § 2679(d)(2) provides that this action shall be removed to United States District Court upon such certification.

Defendants Kenae Merritt and U.S. Postal Service pray that the above-captioned action, pending in the County Court of Douglas County, Nebraska, be removed to this Court.

KENAE MERRITT; U.S. POSTAL SERVICE,
Defendants

ROBERT C. STUART
Acting United States Attorney
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REQUEST FOR TRIAL

The United States of America requests that trial of this case be held at Omaha, Nebraska, and that the case be calendared accordingly.

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: N/A, and also hereby certify that a copy of the same has been served by regular mail, postage prepaid, to the following non-CM/ECF participants:

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COUNSEL FOR PLAINTIFF

Kenae Merritt

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CO-DEFENDANT

s/ Lynnett M. Wagner
Assistant United States Attorney